

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 8316 of 1991****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?
2 To be referred to the Reporter or
not ?
3 Whether their Lordships wish to see
the fair copy of the judgment ?
Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?
5 Whether it is to be circulated to
the civil judge ?

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PATEL ISVARBHAI GANESHBHAI - Petitioner(s)
Versus
ADDITIONAL PRINCIPAL SECRETARY(APPEAL) & 2 -
Respondent(s)

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Appearance :

MR AN PATEL for Petitioner(s) : 1,
MR MR MENGADE AGP for Respondent(s) : 1 - 2.
None for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Additional Secretary, Revenue Department, State of Gujarat dtd.26/8/1991 in Revision Application No.-SRD-16 of 1990 in dismissing the same and order passed by the Collector, Mehsana dtd.7/8/1990 in allowing the Revision Application No.94 of 1989 and quashing and setting aside the order passed by the Assistant Collector, Patan dtd.31/7/1989 in RTS Case No.42 of 1988.

2. It is the contention on behalf of the petitioner that the petitioner has purchased the land bearing Survey No.478 admeasuring 1 Acre and 90 Guntha of land in the year 1974

against the valuable consideration from the respondent No.3 herein and since then he is in possession of the land in question. It also appears from the record that subsequently, the respondent No.3 has incurred tax liability of the transport authority for Motor Vehicle bearing Registration No.GTS-3516 and there was outstanding dues of the Motor Vehicle of 15/3/1958 and the proceedings were initiated in the revenue court with respect to the aforesaid land in question. The charge of the tax department was mentioned and the said entry came to be challenged by the petitioner before the Assistant Collector, Patan and the Assistant Collector vide order dtd.31/7/1989 allowed the said RTS Appeal No.42 of 1988 quashing and setting aside the order passed by the Mamlatdar, Chanasma dtd.13/6/1988 passed in RTS Case No.14 of 1988 by which the Mamlatdar has continued the charge of the tax department over the land in question. Being aggrieved and

dissatisfied with the order passed by the Asst. Collector, Patan dtd.31/7/1989 in RTS Appeal No.42 of 1988, the Circle Officer of the Motor Vehicle Tax Recovery Officer preferred Revision Application No.94 of 1989 before the Collector, Mehsana and the Collector vide order dtd.7/8/1990 allowed the said appeal and quashed and set aside the order passed by the Assistant Collector, Patan dtd.31/7/1989 passed in RTS Appeal No.42 of 1988. Being aggrieved and dissatisfied with the order passed by the Collector, Mehsana dtd.7/8/1990 in Revision Application No.94 of 1989, the petitioner preferred a revision application before the Additional Secretary, Revenue Department, State of Gujarat being Revision Application No.SRD-16 of 1990 and the Addl.Secretary (Appeals) vide order dtd.26/8/1991 dismissed the said revision application. Feeling aggrieved with the same, the petitioner has preferred the present petition under Articles 226 and 227 of the

Constitution of India.

3.Mr.A.N. Patel, learned advocate appearing on behalf of the petitioner has vehemently submitted that when the petitioner has purchased the land in question since 1974 on payment of consideration and is in possession of the land in question since 1974, there cannot be any charge on the basis of the dues by the original owner over the land in question.

4.Mr.Mengade, learned AGP has submitted that as Rs.15,358=00 was due and payable by the original land owner to the Motor Vehicle Department, the authority was justified in making the entry in the revenue record with regard to the charge of the department and therefore, it is requested to dismiss the present petition. He has also further submitted that so far as the document of 1974 which is

registered sale deed, relied upon by the petitioner is concerned, the same is not registered document and therefore, the same cannot be relied upon.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. Having heard the learned advocates of the parties and considering the materials on record, it is required to be noted that the petitioner has purchased the land in question by sale deed dtd.10/10/1974 and since then he is in possession of the land in question. It is true that the document dtd.10/10/1974 - Annexure-A cannot be said to be a registered sale deed. However, subsequently, suo-motu proceedings were initiated by the Collector of Stamps, Ahmedabad and an order came to be passed on 2/2/1989 directing the petitioner to pay the deficit stamp duty and the penalty and

therefore, submission on behalf of the respondent that the document dtd.10/10/1974 cannot be said to be registered sale deed, cannot be accepted. Once the petitioner purchased the land in question and is in possession of the land in question, for the dues of the original land owners, entry cannot be made in the revenue record for the charge of the authority, as no amount is due and payable by the petitioner. Under the circumstances, the Assistant Collector was justified in setting said the entry with regard to the charge on the basis of the dues of the erstwhile owner and the same was not required to be interfered with by the Collector as well as the Secretary (Appeals). If the authority is in a position to recover the amount from the original owner - respondent No.3 here, it is open for the authority to recover the same from th other property of the respondent NO.3. In fact, this Court while admitting the present

petition on 25/8/1992 has also passed order that the respondent authority is free to recover the entire amount of dues from the respondent No.3.

7.In view of the above when the petitioner has purchased the land in question, the petitioner is justified in making the grievance that there cannot be mutation and/or entry with regard to the charge of the Motor vehicle Department for th dues of the erstwhile land owners. The Collector as well as the Additional Secretary (Appeals) have materially erred in quashing and setting aside the order passed by the Assistant Collector, Patan in quashing and setting aside the entry.

8.For the reasons as aforesaid, the petition succeeds. The judgement and order passed by the Additional Secretary (Appeals) dtd.26/7/1991 in Revision Application No.-SRD-16 of 1990 as

well as the order passed by the Collector, Mehsana dtd.7/8/1990 in Revision Application No.94 of 1989 are hereby quashed and set aside and the order passed by the Assistant Collector, Patan dtd.31/7/1989 in RTS Appeal No.42 of 1988 is hereby restored. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R. SHAH, J.)

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